
CHAPTER 78-1.1. CABLE TELEVISION FRANCHISE

7.300. Definitions. For the purpose of this Ordinance, the following terms, phrases, words, and their derivations shall have the meanings given herein, unless the context clearly indicates that another meaning is intended. The word "shall" is always mandatory, and not merely directory:

- A. City - "City" shall mean the incorporated portions of the City of Frankenmuth, Michigan.
- B. County - "County" shall mean the County of Saginaw.
- C. State - "State" shall mean the State of Michigan.
- D. Mayor - "Mayor" shall mean the existing or succeeding Chief Executive Office of the City, or his/her designee.
- E. City Council - "City Council" or "Council" shall mean the present governing body of the City or any successor to the legislative powers of the present City Council.
- F. Chief Administrative Officer - "Chief Administrative Officer" shall mean the existing or succeeding Clerk of City of Frankenmuth, Michigan.
- G. City Attorney - "City Attorney" shall mean the existing or succeeding retained legal counsel of the City or his/her assistants.
- H. Franchise - "Franchise" shall mean the permission, license or authorization given hereunder to construct, operate and maintain a Cable Television system in the City, including this Ordinance.
- I. Franchisee - "Franchisee" shall mean any grantee under this Ordinance receiving a Franchise granted herein; or the successors, transferees or assignees of such grantee.
- J. Cable Act - "Cable Act" shall mean the Cable Communications Policy Act of 1984 and the Cable Television Consumer Protection and Competition Act of 1992.
- K. Federal Communications Commission, FCC - "Federal Communications Commission" or "FCC" shall mean that administrative agency of the Federal government responsible for cable television regulation on a national level, or its lawful successor. To the extent that the FCC does not specifically regulate cable television, the City shall become, subject to the Cable Act, the lawful successor to said agency for the promulgating of rules and regulations for the cable television operation, solely to the extent that said operation relates to and affects the City.
- L. Community Antenna Television System: CATV - "Community Antenna Television System" or "CATV" or "Cable Television System" shall mean any facility which:
 - (1) Consists of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community.
- M. Person - "Person" shall mean any person, firm, partnership, association, corporation, company or organization of any kind.

- N. Subscriber - "Subscriber" shall mean a purchaser of any service delivered over the system to an individual dwelling unit or of service to be utilized in connection with a business, trade or profession.
- O. Ordinance - "Ordinance" as used herein shall include this Ordinance and as the same from time to time may be amended.
- P. Channel - "Channel" shall mean a band of frequencies in the electro-magnetic spectrum which is capable of carrying either one (1) or more audio-video television signals and/or a number of non-video signals.
- Q. Access Channels - "Access Channels" shall mean those channels set aside for specific access purposes, as described in Sections 611 and 612 of the Cable Act.
- R. Basic Cable Subscriber Services; Basic Cable Service - "Basic Cable Subscriber Services" or "Basic Cable Service" shall mean any service tier which includes the retransmission of local television broadcast signals as defined in the Cable Act.
- S. Additional Service - "Additional Service" shall mean any communications service other than Basic Service provided over the Cable Television System by Franchisee directly or as a carrier for its subsidiaries, affiliates, or any other person engaged in communications services including, but not limited to, satellite delivered non-broadcast signals, premium pay programming, burglar alarms, computer controlled services or other electric intelligence transmissions, facsimile reproductions, meter readings, home shopping, fire and smoke detectors, medical alarms, and police alert systems.
- T. Normal Service Interval - "Normal Service Interval" shall mean the period between the time that Franchisee is notified by a subscriber of a service deficiency and two business days following the receipt of such notice, provided that the subscriber or his representative is available during this period at the premises to be serviced.
- U. Pay Television - "Pay Television" shall mean the delivery over the Cable Television System of video and/or audio signals in intelligible form to Subscribers for a fee or charge (over and above the charge for Basic Service) on a per program, per channel or other subscription basis.
- V. Street - "Street shall mean the surfaces of and the space above and between any public street, road, highway, freeway, lane, path, public way or place, alley, court, sidewalk, boulevard, parkway, drive or other easement now or hereafter held by the City for the purpose of public travel and shall include such other easements or rights-of-way as shall be now held or hereafter held by the City which shall, within their proper use and meaning, entitle the City and its Franchisee to the use thereof for the purpose of installing or transmitting Cable Television System transmissions over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to a Cable Television System.
- W. Public School - "Public School" shall mean any school which is a part of an educational program operated by City of Frankenmuth.
- X. Private School - "Private School" shall mean any school, college or university which is part of a parochial or religious school system and is operated not for profit.
- Y. Local Educational Authorities - "Local Educational Authorities" shall mean those individuals, groups, organizations, or governmental entities which provide for primary or secondary education, whether public or private, within the incorporated City.

Z. Good Cause - "Good Cause" shall represent that set of facts and circumstances which, is an individual case, a reasonable man would adjudge to be beyond Franchisee's reasonable control and which would, therefore, represent a justifiable excuse of non-performance. Depending on the facts and circumstances, good cause may include, but shall not be limited to, delays or interruptions arising from necessary utility changes, rearrangements, power outages, damage to the equipment of Franchisee by the City or a third part, the fulfillment of any Federal, state and/or local governmental or regulatory restrictions or requirements, national emergency, uncontrollable material shortages, fire, earthquakes or the elements and acts of God.

AA. Substantial Uniformity - "Substantial Uniformity" shall mean having incorporated all terms and provisions of this Ordinance which may legally be contracted for between the City and Franchisee into the acceptance instrument.

7.301. Franchise Agreement. There is hereby granted by City of Frankenmuth to Cable Equities of Colorado, Ltd., its successors and assigns, the right, privilege and Franchise to construct, operate and maintain a Cable Television System within the Franchise area as herein defined, for a period of fifteen (15) years from the effective date of this Ordinance, subject to the conditions and restrictions as hereinafter provided. Said Franchise may be renewed by the City for an additional fifteen (15) year period if such renewal is made in writing and in compliance with the Cable Act.

7.302. Authority Not Exclusive. The right to use and occupy said Franchise area as defined in Section 7.303 herein for the purposes herein set forth shall not be exclusive, and the City reserves the right to grant a similar use of said Franchise area to any person or entity at any time during the period of this Franchise.

7.303. Franchise Territory. This Franchise is for the present territorial limits of the City of Frankenmuth, Michigan, and for any area henceforth added thereto during the term of this Franchise.

7.304. Extension of the City Limits. Upon the annexation of any incorporated territory by the City (other than through a governmental consolidation process, as to which the City makes no agreement), the rights of Franchise hereby granted shall extend to the territory so annexed to the extent which the City has authority; and all facilities owned, maintained or operated by Franchisee, located within, under or over streets of the territory so annexed, shall thereafter be subject to all terms hereof.

7.305. Operational Standards.

A. The Cable Television System as contemplated herein shall be installed and maintained in accordance with the highest accepted industry standards to the end that the subscriber may receive the most desirable form of service. The Cable Television System will be built in all areas of the incorporated territory of the City having a density of 40 occupied dwelling units per cable mile. The number of cable miles will be calculated starting at the closest point of active serviceable distribution system and will continue until reaching within 250 feet of each dwelling unit.

B. The Cable Television System shall be installed and remain capable of using all band equipment and of passing the entire VHF and FM spectrum and it shall have the further capability of converting UHF for the distribution to subscribers on the VHF band.

C. The Cable Television System shall be installed and remain capable of transmitting and passing the entire color television signals without the introduction of material degradation of color fidelity and intelligence.

D. The Cable Television System shall be installed and remain capable of twenty-four (24) hours per day continuous operation.

E. The Cable Television System shall be capable of and will produce a picture upon any subscriber's television screen in black and white or color (provided the subscriber's television set is capable of producing a color picture) that is materially undistorted and free from ghost images and accompanied by proper sound, assuming the technical, standard production television set is in good repair and that the television broadcast signal transmission is receivable satisfactorily at the Franchisee's antenna site. In any event, the picture produced shall be as good as is generally accepted in the cable television industry.

F. The Cable Television System shall transmit or distribute signals of adequate strength to produce good pictures with good sound in all television receivers operating within the manufacturer's specifications of all subscribers without causing cross modulation in the cables or interference with other electrical or electronic systems.

G. Franchisee shall not allow its cable or other operations to interfere with the television reception of persons not served by Franchisee, nor shall the system interfere with, obstruct or hinder in any manner the operation of the various utilities serving the residents of the City. Should Franchisee discover or otherwise become aware of such interference, Franchisee shall respond with reasonable diligence to eliminate the interference.

H. Franchisee shall continue, throughout the term of this Franchise, to maintain the technical standards and quality of service set forth in this Ordinance.

I. The requirements of A through H above shall be waived by the City upon showing by the Franchisee of good cause.

7.306. Construction Standards.

A. Franchisee shall, at all times, employ reasonable care and shall install and maintain devices or systems for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public.

B. Franchisee shall install and maintain its wires, cables, fixtures and other equipment so as not to interfere with the equipment of any utility serving the residents of the City or any other entity lawfully and rightfully using the conduit, pole or other part of the right-of-way.

C. The Cable Television System shall at all times conform to the construction and maintenance standards set forth below.

(1) Methods of construction, installation and maintenance of the Cable Television System shall comply with the National Electrical Safety Code 1975 (ANSI CI-1975), and any future amendments, modifications or replacements thereof, to the extent that such Code is consistent with the local law affecting the construction, installation and maintenance of electrical supply and communications lines. To the extent that such Code is inconsistent with the other provisions of this Franchise or with local law, the latter shall govern.

(2) Any tower constructed or maintained on City property for use in the Cable Television System shall comply with the standards contained in Structured Standards for Steel Antenna Towers and Antenna Supporting Structures, EIE Standards RS-222-A, as published by the Engineering Department of the Electronic Industries Association, 20001 1 Street, N.W., Washington, D.C. 20006 and as the same may be, from time to time, modified, amended or replaced.

(3) Installations and physical dimensions of any tower constructed on City property for use in the Cable Television System shall comply with all appropriate Federal Aviation Agency Regulations including, but not

limited to, Objectives Affecting Navigable Airspace, 14 C.F.R. Section 77.1 et seq., February 1965 and as the same may be, from time to time, modified, amended or replaced.

(4) Any antenna Structure in the Cable Television System shall comply with Construction, Marking and Lighting of Antenna Structure, 47 C.F.R. Section 77.1 et seq., February, 1965 and as the same may be, from time to time, modified, amended or replaced.

(5) All working facilities and conditions used during construction, installation and maintenance of the Cable Television System shall comply with the standards of the Occupational Safety and Health Administration.

(6) Franchisee shall at all times use reasonable care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public.

(7) Franchisee shall construct and operate the system and related facilities in accordance with generally accepted related industry codes, standards and recommendations that are applicable now or that may hereafter become applicable.

D. As stated above, Franchisee shall be required to reasonable comply with standards as set forth in the publications recited above, this to include any modifications, replacement and/or amendments thereto. However, in the event any publications mentioned herein should become obsolete or should expire, then Franchisee shall be required to comply with the latest set of published standards available at such time of obsolescence or expiration.

E. All conductors, cables, towers, poles and other components of the system shall be located and constructed by the Franchisee in back of the street curbs, except insofar as such components cross streets and public rights of way, so as to provide minimum interference with access by adjoining property owners to the streets and public ways, and no pole or other fixture of the Franchisee shall be placed in the public way so as to interfere with the usual travel on such public way.

F. The requirements of A through E above shall be waived by the City upon showing of good cause.

7.307. Conditions of Street Occupancy.

A. All transmissions and distribution structures, lines and equipment erected by Franchisee within the franchise area shall be located so as to not cause unreasonable interference with the proper use of streets, alleys and other public ways and places and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of said streets, alleys or other public ways and places. The Cable Television System shall be constructed and operated in compliance in all material respects with all adopted local, state and national construction and electrical codes which are in effect as of the date of this construction.

B. Prior to commencing any additional construction, Franchisee shall submit to the City detailed maps showing proposed construction locations. These plans shall show the proposed placement of Franchisee's cables on the City right-of-way, and poles that are to be erected by Franchisee as required for construction, and locations where Franchisee proposes to attach to existing utility poles. Franchisee shall cooperate with the City and any of its agents during any initial construction period and throughout the full term of the Franchise in regards to construction procedures, practices and locations. All cable construction and installations located within City property or City rights-of-way shall be installed and maintained at such locations and depths so as to not interfere with any City road or right-of-way maintenance.

- C. Whenever the City or State of Michigan shall require the relocation or re-installation of any property of Franchisee in any of the streets of the franchise area, it shall be the obligation of the Franchisee, upon notice of such requirements, to cooperate in the timely removal and relocation or reinstallation of said property so as not to cause unreasonable delay. Such relocations, removal or reinstallations by Franchisee shall be at the sole cost of Franchisee to the extent state, federal or other governmental funds specifically allocated for the purpose are not available to reimburse Franchisee for such activity.
- D. Whenever in any place within the franchise area, all or any part of both the electric and telephone utilities shall be located underground, it shall be the obligation of the Franchisee to locate or to cause its property to be located underground within such places. If the electric and telephone utilities shall be relocated underground in any place within the franchise area after Franchisee shall have previously installed its property, Franchisee shall, nevertheless, at the same time or in a timely manner thereafter, remove and relocate its property also underground in such places. Any facilities of Franchisee placed underground at the property owner's request, in an area where electric or telephone facilities are aerial, shall be installed with the additional expense being paid by the property owner.
- E. Franchisee shall have the authority to trim trees upon and overhanging streets of the franchise area so as to prevent the branches of such trees from coming into contact with Franchisee's wires and cables. Franchisee shall obtain from the City, if required, a permit to conduct any such trimming and the same shall be conducted in strict obedience of all local laws and ordinances and at the sole expense of Franchisee.
- F. In the case of any disturbance of any road, ditch or other area within the City right-of-way caused by Franchisee, Franchisee shall, at its own cost and expense and in a manner approved by the City, replace and restore such street or sidewalk in as good a condition as before the work involving such disturbance was done.
- G. Franchisee shall maintain, repair and keep in good condition for a period of one (1) year following such disturbance all portions of a sidewalk or street disturbed by it or its agents, provided such maintenance and repair shall be made necessary because of defective workmanship or materials supplied by Franchisee.
- H. Franchisee shall, upon the request of any person holding a building permit issued by the City, temporarily remove, raise or lower its wires to permit the moving of such building(s). The expense of such temporary removal or raising or lowering of the wires shall be paid by the person requesting the same, and the Franchisee shall have the authority to require such payment in advance. Franchisee shall be given not less than seventy-two (72) hours' advance notice to arrange for such temporary wire changes.
- I. If at any time, in case of fire or disaster in the franchise area, it shall become necessary in the judgment of the Mayor, the Fire Department Division, or the Police Department to cut or move any of the wire cables, amplifiers, appliances or other fixtures of Franchisee, this may be done and the repairs thereby rendered necessary shall be made by Franchisee at the Franchisee's expense unless state or federal or other specifically allocated governmental funds are available to reimburse the Franchisee for such activities.
- J. Franchisee's work, while in progress, shall be properly executed at all times with suitable barricades, flags, lights, flares or other devices as are reasonably required to protect all members of the public having occasion to use the portion of the street involved or adjacent property.

7.308. Supervision by the City.

- A. Franchisee shall construct, operate and maintain the Cable Television System in strict compliance with all laws, ordinances and departmental rules and regulations affecting the Cable Television System.

B. The Cable Television System and all parts thereof shall be subject, upon reasonable notice, to the right of periodic inspection by the City.

C. If at any time, the powers of the Council or any agency or official of the Council are transferred by law to any other Council, authority, agency or official, then such other Council, authority, agency or official shall have the powers and rights previously vested under this Ordinance in the Council or any agency or official of the City.

D. The City and the Franchisee, by its acceptance hereof, agree that the purposes of the provisions hereof are to create the relationship of Franchiser and Franchisee, to provide for the terms and conditions of that relationship.

7.309. Service Maintenance Standards.

A. Franchisee shall maintain sufficient repair and maintenance crews capable of responding to subscriber complaints or requests for service within the normal service interval as defined herein.

B. Service to Subscribers

(1) Any verbal, telephonic or written complaint relating to the quality or continuity service shall be attended to within the normal service interval as defined herein.

(2) The provisions contained in this Subsection shall not apply if the discontinuation of service is occasioned because of an act of God, strike, national emergency, or any other circumstance beyond the control of Franchisee. Similarly, this provision shall not apply to service requests or complaints pertaining to television set malfunctions or other breakdowns not related to the operation of the Cable Television System.

(3) Franchisee shall have the right to prescribe reasonable service rules and regulations for the conduct of its business; provided however that such service rules and regulations, as well as subsequent amendments or modifications thereof, shall be made available upon request for inspection by the City.

7.310. Complaint Procedures.

A. Procedures.

(1) Franchisee shall establish procedures for receiving, acting upon and resolving subscriber complaints. Franchisee shall furnish a notice of such procedures to each subscriber at the time of the initial subscription to the system. In addition, Franchisee shall maintain a written record, or "log", listing the date and time of each customer's complains, identifying the subscriber, describing the nature of the complaints, and when and what action was taken by Franchisee in response thereto. Such records shall be kept for a period of one (1) year reflecting the operations to date and shall be available for inspection during normal business hours.

(2) The Chief Administrative Officer or his authorized designee is hereby designated as the City Complaint Officer and shall have the primary responsibility for the continuing administration of the complaint procedures hereunder. Any subscriber, user, programmer or other interested person who has a complaint regarding the quality of cable television service, equipment malfunctions, billings, or any other matters, which remain unsolved for thirty (30) days after same have been brought to Franchisee's attention, may file a complaint in writing with the City Complaint Officer. Upon the filing of such a complaint, such City Complaint Officer shall notify Franchisee and make an investigation to determine whether or not there is probable cause to credit the allegations. If the City Complaint Officer determines after such investigation that there is probable cause to credit the allegations of the complaint, the City Complaint Officer shall so notify Franchisee and complainant in writing and promptly endeavor to resolve the matter by conciliation and persuasion. In the event that the City

Complaint Officer is unable to obtain conciliation within a reasonable time, the City Complaint Officer shall promptly set the matter for a hearing where all parties may give evidence and the merits of the dispute will be decided. The City Complaint Officer shall make public its decision, along with a statement reciting the basis therefor. Within thirty (30) days thereafter, either Franchisee or the complainant may appeal in writing the decision rendered by the City Complaint Officer to a regular meeting of the City Council. At the City Council meeting, the aggrieved party may contest the findings of fact or interpretation of controlling law, at which time the City Council may affirm, reject, or modify in writing the decision of the City Complaint Officer. The affirmance, rejection or modification of said decision by the three-member Committee shall be final, subject to judicial review upon request of the Franchisee.

B. Franchisee shall notify each subscriber at the time of initial installation of the name and address of the City Complaint Officer and of the procedures contained in this section.

7.311. Liability Insurance.

A. Franchisee shall maintain, and by its acceptance of this Franchise specifically agrees that it will maintain, throughout the term of this Franchise, liability insurance insuring the City and Franchisee with regard to any and all damages for the following:

(1) A general comprehensive public liability insurance policy indemnifying, defending and saving harmless the City, its officers, Councils, commissions, agents or employees from any and all claims by any person or entity whatsoever on account of injury to or death of a person or persons or derivative from any injury to or death of a person or persons (i.e., including but not limited to claims for loss of services, medical and other expenses) occasioned by the operations of Franchisee under this Franchise or alleged to have been so caused or occurred with a minimum liability of Five Hundred Thousand Dollars (\$500,000.00) per personal injury or death of any one (1) person and One Million Dollars (\$1,000,000.00) per personal injury or death of any two (2) or more persons in any one (1) occurrence.

(2) Property damage insurance indemnifying, defending and saving harmless the City, its officers, Councils, commissions, agents and employees from and against all claims by any person or entity whatsoever for property damage, including loss of use and all consequential damages, occasioned by the operation of Franchisee under this Franchise or alleged to have been so caused or occurred with a minimum liability of Two Hundred Fifty Thousand Dollars (\$250,000.00) for property damage to any one (1) person and Five Hundred Thousand Dollars (\$500,000.00) for property damage to any two (2) persons in any one (1) occurrence.

(3) One Million Dollars (\$1,000,000.00) for all other types of liability. All insurance shall be kept in full force and effect by Franchisee throughout the term of this Franchise and until after the removal of all poles, wires, cables, underground conduits, manholes and other conductors and fixtures incident to the maintenance and operation of the Cable Television System as defined in this Franchise.

B. An insurance certificate obtained by Franchisee in compliance with this Section shall be filed and maintained with the Clerk of the City during the term of this Franchise.

C. Neither the provision of this Section nor any damages recovered by the City hereunder shall be construed as limiting the terms, obligations or liabilities imposed under any other Section of this Franchise.

7.312. General Indemnification.

A. Franchisee agrees by the acceptance of this Franchise to indemnify, hold and save the City free and harmless from all liability on account of injuries, deaths or damages to persons or property arising out of the construction,

maintenance, repair and operation of its Cable Television System. In the event that suit shall be brought against the City, either independently or jointly with Franchisee on account thereof, Franchisee shall upon written notice by the City, defend the City in any such suit at the cost of Franchisee, and, in the event of a settlement approved by Franchisee or final judgment being obtained against the City, which Franchisee had notice and opportunity to defend, Franchisee shall indemnify the City and pay such settlement of judgment, together with all costs, and hold the City harmless therefrom.

B. Franchisee shall pay, and by its acceptance of this Franchise specifically agrees that it will pay, all expenses incurred by the City in defending itself with regard to all damages and penalties mentioned in Subsection A hereinabove, provided Franchisee had written notice and declined to defend the City. These expenses shall include, but not be limited to, all out-of-pocket expenses, such as attorney's fees, and shall also included the reasonable value of any services rendered by the City Attorney or his/her assistants or any employees of the City or its agents.

7.313. Assignment of Franchise.

A. No assignment of this Franchise shall take place, whether by forced or voluntary sale, lease, or assignment, without prior written notice to and approval by the Council which approval shall not be unreasonably withheld. The notice shall include full identifying particulars of the proposed transaction, and the Council shall act by resolution. The Council shall have forty-five (45) days within which to approve or disapprove an assignment. If no action is taken within such forty-five (45) day period, approval shall be deemed to have been given.

B. Franchisee shall have the right to mortgage, pledge or otherwise hypothecate the assets of its Cable Television System including the rights granted under this Franchise.

7.314. Review and Renewal.

A. The Council shall not make a decision involving the renewal, cancellation or expiration of Franchisee's Franchise unless the City's Chief Administrative Officer has advised Franchisee in writing, at least thirty (30) days prior to such meeting, as to its time, place and purpose. Such renewal procedures will be conducted pursuant to Section 626 of the Cable Act.

B. It shall be the policy of the City to amend this Franchise upon application of the Franchisee when necessary to enable Franchisee to take advantage of advancements in the state of the art which will afford it an opportunity to more effectively, efficiently or economically serve its subscribers, provided, however, that this Section shall not be construed to require the City to make any amendment. No such amendment shall create any rights in Franchisee other than those specifically set out in such amendments.

7.315. Revocation of Franchise.

A. In addition to all other rights and powers reserved or pertaining to the City, the City reserves, as an additional and as a separate and distinct remedy, the right to revoke this Franchise and all rights and privileges of Franchisee hereunder in any of the following enumerated events or for any of the following reasons:

- (1) Franchisee shall, by act or omission, violate any material or substantial term or condition of this Ordinance or Franchise Agreement and shall within thirty (30) days following written notice by the City fail to effect such compliance; or

- (2) Franchisee becomes insolvent, unable or unwilling to pay its debts, or is adjudged a bankrupt, or all or part of Franchisee's facilities should be sold under an instrument to secure a debt and are not redeemed by Franchisee within thirty (30) days from said sale; or
- (3) Franchisee fails to restore service following ninety-six (96) consecutive hours of interrupted service, except when an act of God, disaster, or other action beyond the control of the Franchisee caused such service interruption; or
- (4) Franchisee attempts to or does practice any fraud or deceit or pattern of material misrepresentation in its conduct or relations with the City under this Franchise.

B. No such revocation shall be effective unless or until the Council shall have adopted a resolution setting forth the cause and reason for the revocation and the effective date thereof, which resolution shall not be adopted without thirty (30) days' prior written notice thereof to Franchisee and an opportunity for the Franchisee to be heard upon the proposed adoption of said resolution. Franchisee shall furnish to the City a written statement at least ten (10) days prior to the date on which Council convenes to consider such proposed resolution setting out its position relative to the cause(s) of such revocation. In the event the revocation as proposed in said resolution depends upon finding of fact, such finding of fact as made by the Council shall be in writing, after the hearing provided for, if requested by Franchisee.

C. Notwithstanding the grounds for termination herein, no termination procedure shall be held except in compliance with FCC regulations and the Cable Act.

D. Franchisee shall not be declared in default nor be subject to any sanction under any provision of this Section in any case in which the performance of such provision is prevented for reasons of good cause. Any final determination shall be subject to judicial review upon request of the Franchisee.

7.316. Removal or Sale of Facilities.

A. In the event of revocation of this Franchise as provided for in Section 7.315 herein or in the event this Franchise is not renewed as provided for in Section 7.314 herein, the City shall have the option of either requiring Franchisee to remove from the public streets where its properties are located all or any part of its equipment and facilities so located within ninety (90) days of the effective date of such revocation or non-renewal, or of requiring Franchisee to leave all of its equipment and facilities in place within the Franchise area.

B. The City's Chief Administrative Officer is hereby authorized to enforce the provisions of this Section as hereinafter provided. The City's Chief Administrative Officer shall immediately notify Franchisee in writing of such revocation or non-renewal. Within ninety (90) days following receipt of such notice, Franchisee shall, if required, commence removal from the streets of the City upon, over and under which its properties are located all of said properties. Such removal, if required, shall be performed by Franchisee in such a manner so as to not permanently destroy, mar or damage the Franchise areas in which such removal is being conducted and will be completed within one hundred eighty (180) days of notice by the City. The City Emergency Management Director shall make an inspection of the areas in which the removal is being or has been conducted, and should it be found that Franchisee has unreasonably destroyed, marred or damage such areas, Franchisee shall be held responsible for the expenses of repairing such areas to the satisfaction of the City.

C. In the event Franchisee has not removed its facilities within one hundred eighty (180) days as described herein, or in the event the City elects not to require Franchisee to remove its facilities, Franchisee shall be obligated to sell its facilities in place within the Franchisee area to either the City or to any new Franchisee

operator. Any sale of facilities as required by this subsection shall be pursuant to the valuation requirements of Section 626 of the Cable Act.

7.317. Liquidated Damages. Should it be found, after conducting the hearing and appeal procedure provided for herein, and after written receipt by Franchisee of a finding of violation by the Chief Administrative Officer or his designee, that Franchisee is in violation of the terms of this Ordinance, the liquidated damages shall be as follows:

- A. For failure to provide or maintain data and reports as reasonably requested by the City or as reasonably required herein,
Franchisee shall forfeit One Hundred Dollars (\$100) per day or part thereof that the violation continues, if after twenty (20) days written notice such data or reports are not supplied.
- B. For failure to comply with the operation standards as specified in Section 7.305 thereof, following the Council's resolution directing Franchisee to make improvements within a reasonable time period, Franchisee shall forfeit Fifty Dollars (\$50) per day or part thereof that the violation continues unless cause can be shown for said delay.
- C. For failure to test, analyze and report on the performance of the system following the reasonable request of the City, Franchisee shall forfeit Fifty Dollars (\$50) per day or part thereof that the violation continues unless cause can be shown for said delay.
- D. The rights in this Section are separate, distinct and in addition to those enumerated elsewhere in this Ordinance.
- E. Any liquidated damages imposed by City of Frankenmuth in accordance with this license may be reduced by the City if it finds that the failure of the Franchisee resulted from conditions beyond the Franchisee's control and/or Acts of God.
- F. Any damages assessed under this Section, shall be subject to judicial review at the request of the Franchisee.

7.318. Rights Reserved to the City. Without limitation upon the rights which the City might otherwise have, the City does hereby expressly reserve the following rights, powers and authorities:

- A. To exercise its governmental police powers now or hereafter to the full extent that such powers may be vested in or granted to the City.
- B. To grant additional Franchises within the City to other persons for the construction of a Cable Television System.
- C. To exercise any other rights, powers or duties required or authorized under the Constitution of the State of Michigan, the laws of Michigan or the City Charter.

7.319. Compliance Laws, Rules and Regulations.

- A. Notwithstanding any other provision of this Franchise to the contrary, Franchisee shall at all times reasonably comply with all laws, rules and regulations of the State and Federal governments or any administrative agencies thereof including but not limited to the Federal Communications Commission; provided, however, that if any such State or Federal law, rule or regulation shall require Franchisee to perform any service or shall prohibit Franchisee from performing any service or shall permit Franchisee to perform any service in conflict with the terms of this Franchise or of any law, rule or regulation of the City, then as soon as possible following knowledge thereof,

Franchisee shall notify the City's Chief Administrative Officer of the point of conflict believed to exist between such law, rule or regulation and the laws, rules or regulations of the City or this Franchise. Provided, however, that nothing herein shall compel Franchisee to act in any way which violates or contravenes any local, State or Federal law, rule or regulation.

B. Franchisee shall be subject to all reasonable City resolutions, rules and regulations and Franchisee shall also be subject to all applicable rules and regulations which, from time to time, may be promulgated by the Federal Communications Commission for Cable Television Systems, including rate structures.

7.320. Notices to Franchisee. At any time the City Administrative Officer, Chairperson, Council, members of the Council, or resident of the City brings an issue regarding this Ordinance, agreements or applications thereunder, or the activities of any Franchisee to a meeting or work session of the Council, the City Administrative Officer will notify Franchisee. Such notification shall take place at least thirty (30) days prior to the meeting.

7.321. Severability. If any section, subsection, sentence, clause, phrase or portion of the Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holdings shall not affect the validity of the remaining portions thereof.

7.322. Time Essence of this Franchise. Whenever this Franchise shall set forth any time for any action to be performed by or on behalf of Franchisee, such time shall be deemed of the essence and any failure of Franchisee to perform within the time allocated may be sufficient grounds for the City to revoke this Franchise: provided Franchisee receives notice of intent to revoke and has thirty (30) days to cure any and all alleged violations as specified in the Ordinance.

7.323. Acceptance. This Ordinance shall, upon adoption of the Council of City of Frankenmuth and its execution by the proper municipal officials and further acceptance by the Franchisee, be and become a valid and binding contract between City of Frankenmuth and Cable Equities of Colorado, Ltd., its successors and assigns.

Editor's Note: This Ordinance was adopted in its entirety by Ordinance No. 94-2, 07-05-1994.